IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Special Appeal No. 64 Of 2005

1. Registrar Co-operative Sociries
   State of Uttaranchal, Dehradun
2. District Assistant Registrar,
   Co-operative Societies,
   Udham Singh Nagar, Uttaranchal ... Appellants

Verses

Rajvanshi Prasad S/o Shiv Mangal Ram
R/o Village Sisaiya (Melaghat)
P.O. Khalimahuvat Tehsil Khatima
District Udham Singh Nagar ...Respondent/
Petitioner

Shri Shobhit Sahari, learned counsel for the appellants.
Sri K.S. Bora, learned counsel for respondent/petitioner

Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

By way of this special appeal the judgment and order dated 11.08.2005 passed by the Single Judge of this Court in Writ Petition No. 102 (S/B) of 2003 with a prayer for reviewing /recalling the order dated 11.08.2005 vide order dated 15.06.2004 passed in the same writ petition has been put to challenge.

2. The respondent (petitioner in the writ petition) had prayed for issuing of a writ of certiorari quashing the order of retirement dated 17th September, 2002 passed by the appellant No.2 – District Assistant, Registrar Cooperative Societies, Udham Singh Nagar by which the respondent/petitioner was retired w.e.f. 30.06.2002. Further prayer has been made in the nature of mandamus directing the appellants to allow the respondent to work till he attains the age of 60 years and to pay him all consequential benefits of the Government Service accruing from time to time.

3. The respondent was appointed as Kurk Amin by District Collector, Udham Singh Nagar on 8th August, 1973 for the realization of outstanding dues of the various Co-operative Societies as arrears of land revenue. He was given the post of collection/recovery from the month of August to March and from the month of April to July.

4. The grievance of the respondent is that he should have been treated as Government Servant keeping in view the judgment of Hon'ble Apex Court in State of U.P. Vs. Chandra Prakash Pandey & others reported in JT 2001(4) SC 145 and he should have been retired at the age of 60 years and as such, the letter dated 17th September, 2002 which was given to the respondent on 19th September, 2002 informing him that he is being treated as retired on 30th June, 2002 is wholly illegal. In the writ petition, a counter affidavit was filed by the State stating therein that so far as the judgment of the Apex Court in State of U.P. Vs. Chandra Prakash Pandey (supra) is concerned, it applies only to those cooperative Kurk Amins who have been given appointment on the salary basis and since the respondent has rendered his services as commission agent with the cooperative society, therefore, the respondent is not entitled for any benefit in the grab of the judgment passed by Hon'ble Apex Court and therefore, the petitioner has rightly being retired at the age of 58 years. The respondent/petitioner filed a Rejoinder Affidavit stating therein that according to the Hon'ble Supreme Court's judgment in the case of State of U.P. Vs. Chandra Prakash Pandey (supra), Kurk Amins appointed on commission basis are like the Kurk Amins appointed on salary basis and they are the holder of civil post and hence, they cannot be denied the benefit given to their counterparts. After having heard learned counsel for the parties and perusing the entire material on record, the learned Single

Judge allowed the writ petition and directed the respondents to treat the respondent in service as the age of superannuation is 60 years and further to extend all the benefits to the respondent/petitioner treating him as in service. Thereafter, learned counsel for the appellants/respondents filed a review petition for recalling the above order passed by the Learned Single Judge, which too was dismissed on 11.08.2005. Feeling aggrieved by the aforesaid judgment and order passed by the learned Single Judge, the appellants have come up in this special appeal.

5. Heard Sri Shobhit Saharia, learned counsel for the appellants, Sri. K.S. Bora, learned counsel for the respondent and perused the record.

6. This Court in a similar Writ Petition NO. 383 (S/S) of 2003 Jagpal Vs State of Uttaranchal & others has placed reliance on the notification dated 28th February, 2003 by which the age of superannuation of the employees working in the cooperative societies has been enhanced from 58 to 60 years w.e.f. 31st January, 2003.

7. The judgment passed in the aforesaid writ petition was challenged by way of special appeal and the Division Bench of this Court held that the G.O. dated 28th February, 2003 is applicable to all the cooperative societies and the retirement age would be 60 years.

8. The Hon'ble Apex Court in the case reported in JT 2001(4) SC 145 State of U.P. Vs Chandra Prakash Pandey & others has observed that *"Undisputedly, the decision of the Allahabad High Court that the Kurk Amins, appointed on salary basis for realization of dues of cooperation societies held civil*

post and became Government servants has attained finality as its correctness has not been challenged by the State of Uttar Pradesh by bringing the matter to this Court, rather the same got approval of this Court while remanding the matter to the High Court for consideration the question whether cases of Kurk Amins appointed on commission basis stand on the same footing as that of Kurk Amins appointed on salary basis in whose cases it was declared that the held civil posts and would be entitled to the same salary as is payable to Kurk Amins of Revenue Department."

9. The learned Single Judge in the light of the aforesaid judgment of the Hon'ble Apex Court as well G.O. dated 28th February, 2006 allowed the writ petition and directed the Department to extent the benefit of aforesaid G.O. to the respondent/petitioner.

10. We do not find any good ground for interfere in the impugned judgment passed by the learned Single Judge.

11. In view of the above, the Special Appeal is dismissed accordingly. The judgment and order passed by learned Single Judge is upheld.

(B.C. Kandpal, J.) **(P.C. Verma,J.)**

05.05.2006.
ASWAL